



Office de la propriété
intellectuelle
du Canada

Un organisme
d'Industrie Canada
www.opic.gc.ca

Canadian
Intellectual Property
Office

An Agency of
Industry Canada
www.cipo.gc.ca

51355-3

RECEIVED

2005 FEB 15 A 8:01

February 11, 2005

SMART & BIGGAR
P.O. Box 2999
Station D
OTTAWA Ontario
K1P 5Y6

Application No. : **2,208,246**
Owner : **SENSORY SYSTEMS D/B/A COSMEDERM TECHNOLOGIES**
Title : **FORMULATIONS AND METHODS FOR REDUCING SKIN IRRITATION**
Classification : **A61K-7/00**
Your File No. : **~~76207-95~~ TH:ekk**
Examiner : **Catherine Savard**

YOU ARE HEREBY NOTIFIED OF A REQUISITION BY THE EXAMINER IN ACCORDANCE WITH SUBSECTION 30(2) OF THE *PATENT RULES*. IN ORDER TO AVOID ABANDONMENT UNDER PARAGRAPH 73(1)(A) OF THE *PATENT ACT*, A WRITTEN REPLY MUST BE RECEIVED WITHIN 6 MONTHS AFTER THE ABOVE DATE.

This application has been examined taking into account the:

Description, as originally filed;
Claims, as originally filed;
Drawings, as originally filed.

This application has been examined taking into account applicant's correspondence on prior art received in this office on February 13, 2003 and February 21, 2003.

The number of claims in this application is 114.

The search of the prior art has been limited because too many relevant documents can be cited against the claims presently on file. The following list of references is **representative** of the prior art, but is **not exhaustive**:

References Applied:

United States Patents

4,477,439 □

Oct. 16, 1984

D'Alelio

4,943,432 □

Jul. 24, 1990

Biener

2,208,246

- 2 -

European Patent Office Patent

217,975

Apr. 15, 1987

Biener

PCT Application

WO 89/06133

Jul. 13, 1989

Commin

French Application

2,590,273 □

May 22, 1987

Brevier

French Drug Patent

FR5,394M

Jan. 30, 1965

Papageorgiou-Lambos

□ citation stemming from a foreign search report

D'Alelio discloses a process for reducing the soreness of irritated or excoriated areas by the application of a sulfate or phosphate of barium, calcium, strontium or zinc.

Biener (US'432) discloses a composition for the treatment of psoriasis and other skin diseases comprising a salt mixture, which comprises, among others, strontium salt.

Biener (EP'975) discloses a solution comprising a salt mixture for the treatment of psoriasis, acne, neurodermatitis and ichthyosis; said solution comprises, among others, strontium cation.

Commin discloses an aqueous solution comprising, among others, strontium salt, for the treatment of viral diseases.

Brevier discloses the use of an artificial sea water composition as a topical treatment for skin; said sea water comprises strontium chloride.

Papageorgiou-Lambos disclose medical and cosmetic compositions comprising strontium chloride and cresol.

The examiner has identified the following defects in the application:

Claims 1-5, 10, 12, 15, 38, 40, 42, 45, 52, 53, 56-58, 62-68, 74, 75, 86, 93, 95, 96, 100, 101, 104, 110 and 111 do not comply with paragraph 28.2(1)(b) of the *Patent Act*. Biener (US'432 or EP'975) disclosed the claimed subject matter before the claim date.

Claims 1-5, 10, 12, 26, 27, 32, 33, 35, 36, 38, 40, 43, 45, 48, 49, 52, 53, 57, 60, 62-65, 67-70, 73-75, 87, 89, 90, 93, 95, 96, 100, 101, 104-106 and 109-111 do not comply with paragraph 28.2(1)(b) of the *Patent Act*. Papageorgiou-Lambos disclosed the claimed subject matter before the claim date.

2,208,246

- 3 -

Claims 1-5, 10, 34-36, 45, 52-57, 62-68, 74-78, 80, 93, 95-97, 100, 101, 104, 110, 111 and 113 do not comply with paragraph 28.2(1)(b) of the *Patent Act*. Brevier disclosed the claimed subject matter before the claim date.

Claims 1, 38, 40, 42, 45, 50, 52, 53, 56, 58, 62, 67, 68, 71, 74, 75, 86, 91, 93, 95, 96, 98, 100-104, 107, 110, 111 and 114 do not comply with paragraph 28.2(1)(b) of the *Patent Act*. D'Alelio disclosed the claimed subject matter before the claim date.

Claims 1, 38, 40, 42, 45, 50, 52-54, 56, 57, 62, 67, 71, 91, 93 and 95-97 do not comply with paragraph 28.2(1)(b) of the *Patent Act*. Commin disclosed the claimed subject matter before the claim date.

Claim 1 is indefinite and does not comply with subsection 27(4) of the *Patent Act*. The expression "an irritant ingredient contained in an amount capable of inducing skin irritation" is vague and indefinite and therefore makes the composition of the alleged invention indefinite. (1)

Claims 6-9, 59 and 60 are indefinite and do not comply with subsection 27(4) of the *Patent Act*. The inclusion of "susceptible" causes ambiguity. (2)

Claims 6-9, 59, 60, 84 and 85 do not comply with subsection 138(2) of the *Patent Rules* for being directed to the desired result rather than to the combination necessary to achieve that result as described in the description. (3)

Claims 6, 8, 59, 60, 84 and 85 are indefinite and do not comply with subsection 27(4) of the *Patent Act*. The inclusion of the expression "at least about" causes ambiguity. (4)

Claims 26 and 27 are indefinite and do not comply with subsection 27(4) of the *Patent Act*. The units of the percentages must be specified (by volume or by weight, etc.). (5)

Claims 58 and 98 are indefinite and do not comply with subsection 27(4) of the *Patent Act*. The "second anti-irritant agent" is not defined which makes the claimed composition indefinite. (6)

Claims 68-73 and 105-109 are indefinite and do not comply with subsection 27(4) of the *Patent Act*. The following terms or expressions have no antecedents, because they are not "skin irritation" or related to skin: (7)

"asthma", "rhinitis" or "conjunctivitis" (claim 68)

"ocular" (claim 69 or 105)

"respiratory system" (claim 70 or 106)

"gastrointestinal system" (claim 71 or 107)

"reproductive system" (claim 72 or 108)

"mucous membrane" (claim 73 or 109).

2,208,246

- 4 -

The *Concise Oxford Dictionary*, [Tenth Edition, Oxford University Press, 1999] defines the "skin" as "the thin layer of tissue forming the natural **outer** covering of the body" (emphasis added). All of the above terms or expressions are not related to skin according to the recognized definition.

Claims 86-92 are indefinite and do not comply with subsection 27(4) of the *Patent Act*. The following terms or expressions have no antecedents, because they are not "skin irritation" or related to skin:

(8)

- "rectal" or "vaginal" (claim 86)
- "mouth" or "throat" (claim 87)
- "lozenge", "mouthwash" or "gargle" (claim 88)
- "ocular" (claim 89)
- "respiratory system" (claim 90)
- "gastrointestinal system" (claim 91)
- "reproductive system" (claim 92).

The *Concise Oxford Dictionary*, [Tenth Edition, Oxford University Press, 1999] defines the "skin" as "the thin layer of tissue forming the natural **outer** covering of the body" (emphasis added). All of the above terms or expressions are not related to skin according to the recognized definition.

Claims 100-114 are directed to a method of medical treatment that does not produce an essentially economic result in relation to trade, commerce, or industry, and is therefore outside the definition of invention in section 2 of the *Patent Act*. (See *Tennessee Eastman v. Commissioner of Patents* (1974) S.C.R. 111, or (1972) 8 C.P.R. (2d) 202, confirmed by *Imperial Chemical Industries v. Commissioner of Patents* (1986) 3 F.C. 40, or (1986) 9 C.P.R. (3d) 289).

(9)

A statement in an application, such as found on page 24, line 24 and page 29, line 8 which incorporates by reference any other document, does not comply with subsection 137(1) of the *Patent Rules*.

(10)

In accordance with subsection 137(2) of the *Patent Rules*, all documents referred to in the description of an application must be available to the public. References to the document on page 18, lines 13-14 and page 24, lines 21-22 must be deleted or replaced by its corresponding patent number or publication number.

(11)

Under section 140 of the *Patent Rules*, every trade-mark must be identified as a trade-mark. If "Elizabeth Arden Visible Difference Refining Toner" on page 32 and "Vaseline" on page 40 are trade-marks, and if the toners and cosmetic compositions found on page 43 are trade-marks, they must be so identified.

(12)

Under section 34 of the *Patent Rules*, any amendment made in response to this requisition must be accompanied by a statement explaining the nature thereof, and how it overcomes each of the above objections.

2,208,246

- 5 -

In view of the foregoing defects, the applicant is requisitioned, under subsection 30(2) of the *Patent Rules*, to amend the application in order to comply with the *Patent Act* and the *Patent Rules* or to provide arguments as to why the application does comply.

Catherine Savard
Patent Examiner
(819) 953-8983
2208246A.CAT